



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 12, 1996

Mr. Rick Ybarra
Office of the Attorney General
General Counsel Division
P.O. Box 12548, MC-018
Austin, Texas 78711-2548

OR96-0310

Dear Mr. Ybarra:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38554.

The Office of the Attorney General of the State of Texas (the "OAG") received a request for "[a]ll documents (in draft or final form) . . . related to the application(s) by the State of Texas to take primary responsibility for the implementation and enforcement of the NPDES program of the Federal Clean Water Act" You have submitted information from the OAG's Natural Resources Division that you assert is excepted from required public disclosure pursuant to sections 552.101, 552.107(1), and 552.111 of the Government Code.

Section 552.107(1) states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

This exception applies only to information that reveals attorney advice and opinion or client confidences. See Open Records Decision No. 574 (1990). Assuming that these records have not been revealed to anyone outside of the OAG or the client agency, we

agree that this exception applies to portions of the submitted information. We have marked the documents accordingly.

Section 552.111 of the Government Code excepts from required public disclosure:

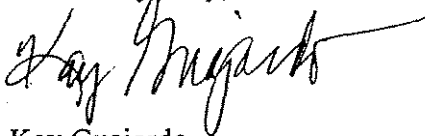
An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* Section 552.111 also protects from disclosure drafts of a document that has been or will be released in final form and any comments or other notations on the drafts because they necessarily represent advice, opinion, and recommendation of the drafter as to the form and content of the final document.

We conclude that section 552.111 applies to portions of the requested information. We have marked the documents accordingly.

Having concluded that sections 552.107(1) and 552.111 of the Government Code apply to the requested information, we need not consider your section 552.101 claim. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID# 38554

Enclosures: Marked documents

cc: Mr. Richard Lowerre
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(w/o enclosures)